Supreme Court, U. S.
FILED
APR 7 1977
MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-969

J.P. HOUSE, ET AL.,
Petitioners,

VERSUS

GEORGE WALLACE, SR., ET AL.,
Respondents.

---

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

STANLEY A. HALPIN, JR.
234 Loyola Ave.
Suite 819
New Orleans, Louisiana
70112

JACK GREENBERG
ERIC SCHNAPPER
Suite 2030
10 Columbus Circle
New York, New York
10019

Attorneys for Respondents

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

---

No. 76-969

---

J.P. HOUSE, ET AL.,
Petitioners,

VERSUS

GEORGE WALLACE, SR., ET AL.,
Respondents.

---

RESPONSE TO PETITION FOR
WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondents pray that this Court deny the petition for writ of certiorari sought by petioner to review the decision of the United States Court of Appeals for the Fifth Circuit rendered September 17, 1976, in response to this court's remand of April 26, 1976 _____ U.S. _____ (1976) and affirming the

judgment of the United States District Court for the Western District of Louisiana issued June 6, 1976, 377 F. Supp. 1192 (1974).

## QUESTION PRESENTED

Whether on remand from this court, the Court of Appeals clearly erred in upholding the District Court's use of single-member districts as a remedy to a concededly unconstitutional and racially discriminatory districting scheme.

## STATEMENT OF THE CASE

The District Court applying the standards of White v. Regester 412 U.S. 755 (1973) and related cases, found that at-large elections for aldermen of the town of Ferriday were constitutionally infirm and as a remedy provided a single-member district plan which it required defendants-petitioners to devise and submit to the court. The District Court rejected a plan proposed by the aldermen which employed one at-large seat and four districts. The District Court fully considered this plan, but found no special circumstances for preferring it over the single-member district plan. (See particularly findings #43 through 48 of the District Court's findings of facts and conclusions of law at p.A-55 through A-57 of the petition).

The Fifth Circuit writing prior to this Court's decision in East Carroll Parish School Board v. Marshall ___ U.S. ___ (1976) 96 S.Ct. 1083 affirmed the District Court's invalidation of the



at-large election scheme, but reversed the District Court's preference for single-member districts as a remedy. Your present respondents then petitioned this court for a writ of certiorari, urging remand in light of the East Carroll decision, supra. On April 26, 1976, this court granted the writ, vacated the judgment and remanded the case to the Fifth Circuit for further consideration in light of East Carroll, supra. On remand, the Fifth Circuit, found that in light of East Carroll, supra, the District Court had indeed applied the proper standard in preferring single-member districts as a remedy absent unusual circumstances. The District Court had in fact considered whether there were any special circumstances which would compel a different remedy but had found none. The Fifth Circuit, noting the completeness of the record on this issue, similarly could find no special circumstances which would justify the abandonment of single-member districts as a remedy and accordingly affirmed the District Court's judgment.

Defendant-petitioners took no action and the mandate issued to the District Court on October 26, 1976. Upon receipt of the mandate and upon motion of plaintiffs-respondents for compliance therewith, the District Court on November 1, 1976 entered an order (see P. A-143-4 of petition) directing that the elections proceed under the District Court's single-member district plan. On November 8, 1976 defendants-petitioners moved the Fifth

Circuit to recall the mandate. On November 16, 1976 the Fifthe Circuit denied the motion. Defendant-petitioners have made no attempt to obtain a stay from this Court. Elections have thus gone forward and were completed on March 15, 1976. In these elections two white aldermen (Raymond Galloway and Eddie Max Newman) and three black aldermen (Elijah Calhoun , Henry A. Montgomery and Clarence Hymon) were elected. The newly elected mayor is white. The Secretary of State of Louisiana will officially promulgate the results of the election on March 28, 1977 and commissions will be issued to the newly elected aldermen on the following day.

## REASONS FOR DENYING THE WRIT

Petitioners principal complaint is that the decision of the Court of Appeals below did not direct that the District Court consider once again whether unusual circumstances exist in this case to exempt it from the rule that in devising remedial redistricting plans District Court should give preferance to single-member districts. The District Court considered this issue in great detail at the original trial. The defendant-petitioners submitted the single-member district plan to the District Court only under protest and urged most strenously that the District Court approve instead the plan with at-large feature as a remedy. After hearing extensive evidence (including expert testimony) on the question of which plan



was the most appropriate remedy, the District Court made specific findings regarding its choice of a remedial plan. There is no question that the District Court considered the very facts which petitioners now urge that the District Court be made to reconsider (see District Court findings of fact and conclusions of law, P. A-46 through A-57 of the petition).

The District Court clearly was applying the proper standards in accordance with this Court's decisions in Connor v. Johnson 402 U.S. 690 (1971), Connor v. Williams 404 U.S. 549 (1972) and Mahan v. Howell 410 U.S. 315 (1973) This Court's decisions in Chapman v. Meier, 420 U.S. 1 (1975) and East Carroll, supra, rendered subsequent to the District Court's decision only reinforce the conclusion that the District Court applied the proper standard to the facts of this case. The Fifth Circuit so found on remand from this Court. No purpose would have been served by requiring the District Court to again consider whether single-member districts was the appropriate remedy.

The decision below thus does not conflict with decisions of this Court, does not conflict with other decisions of the Fifth Circuit and does not conflict with decisions of other circuits. Further, the central contention of the petition, that the District Court should be required to consider again specific facts, is hardly any issue of broad policy which would warrant issuance of the writ. Accordingly the writ should

be denied.

It should be further observed that due to the failure of defendants-petitioners to seek and obtain a stay of the mandate, the District Court has ordered the elections to proceed and a new Board of Aldermen has been elected, will have been issued their commissions and will have taken office by the time this response is received by the Court. Under Rule 25 (d) (1) of the Federal Rules of Civil Procedure, the new aldermen are automatically substituted for their predecessors in office as Party Defendants. Further it is entirely conceivable that upon assuming office the new aldermen will enact into law the Court directed single-member district plan. Thus, serious doubts are raised as to whether a case or controversy remains after commissions are issued to the newly elected aldermen on March 29, 1977. For this additional reason respondents urge that it would be inappropriate for the writ to be granted.

## CONCLUSION

For the foregoing reasons respondents respectfully urge that the petition for a Writ of Certiorari be denied and that this final chapter in the struggle of Black People to cast an unfettered vote in Ferriday, Louisiana be concluded.



Respectfully submitted,

STANLEY A. HALPIN, JR.
234 Loyola Ave.
Suite 819
New Orleans, Louisiana 70112
(504) 523-2939

JACK GREENBERG
ERIC SCHNAPPER
Suite 2030
10 Columbus Circle
New York, New York 10019

by _____

CERTIFICATE

I, Stanley A. Halpin, Jr., Attorney for Respondents, and a member of the Bar of the United States Supreme Court, do hereby certify that on this _____ day of March, 1977, I served copies of the foregoing Response to Petition for Writ of Certiorari on the attorney of record for petitioners herein, Mr. Norman Magee, 1007 North Fourth Street, Ferriday, Louisiana 71334.

STANLEY A. HALPIN JR.
Attorney for Respondents